IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

Crl.MC.No. 2499 of 2007()

CP.25/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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PETITIONER: ACCUSED 1, 3 & 4

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1. APPREM, AGED 43, S/O.PAPPACHAN,
   ARACKAL HOUSE, ANGAMALY KARA,
   ANGAMALY VILLAGE.

2. MARTIN, AGED 34, S/O.DEVASSY,
   MAMPILLY HOUSE, KIDANGOOR KARA,
   THURAVOOR VILLAGE.

3. JOHNY, AGED 37, S/O.OUSEPH,
   CHIRAMEL HOUSE, ANAPPARA KARA,
   MANJAPRA VILLAGE.

BY ADV. SRI.P.SHAIJAN JOSEPH

RESPONDENTS: COMPLAINANT

SUB INSPECTOR OF POLICE, ANGAMALY
POLICE STATION, ANGAMALY REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2499 of 2007

Dated this the 6th day of August 2007

O R D E R

The petitioners face indictment in a prosecution for offences punishable inter alia under Section 308 I.P.C. Investigation is complete. Final report has already been filed. The petitioners were not present at the crime stage. They have not been arrested and enlarged on bail. Consequent to the filing of the final report, committal proceedings has been registered. The petitioners appeared through counsel and applied to excuse their absence. It was allowed and the matter is posted for appearance to 10/09/2007. The learned counsel for the petitioners submits that the petitioners are absolutely innocent of the allegations raised. The petitioners are willing to appear before the learned Magistrate and seek regular bail. The only apprehension of the petitioners is that because offence under Section 308 I.P.C is also alleged, the learned Magistrate may not consider their application for bail on merits, in accordance with law and expeditiously. They, therefore, pray that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioners on bail when they appear and apply for bail.

2. I am satisfied that the petitioners' application for regular bail must be considered by the learned Magistrate on merits. Such application must be considered in the light of the decision in Sukumari v. State of Kerala [2001(1)KLT 22]). Merely because an allegation under Section 308 I.P.C is raised, the learned Magistrate cannot abdicate his jurisdiction under Section 437 Cr.P.C. The application has got to be considered on merits and appropriate orders passed.

3. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which they could not earlier appear before the learned Magistrate.

3. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioners on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

4. In the result, this Crl.M.C is dismissed but with the specific observation that if the petitioners surrender before the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself in the light of the decisions in Sukumari v. State of Kerala [2001(1) KLT 22] and Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

Hand over copy of this order to the learned counsel for the petitioners.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007